


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Heather Mackenzie-Campbell, Audit Department
From:  Brent Johnson, General Counsel
Re: Keeping a one-clerk court open during conferences
Date: January 4, 2008

This memorandum is in response to your question about what can be done legally to keep a court open when the clerk of a one-clerk office attends the annual justice court clerk conference. This is a question that has arisen in similar contexts, such as how an office can remain open if there is only one employee and the employee must take leave or handle emergencies. My previous discussions on this question have focused on keeping an office functionally open.

Our office has recognized the difficulties that arise in smaller areas in which there might only be one or two employees at a court site. There are various circumstances in which a regular court employee might not be available to keep a court office physically open. In a one-clerk site, a clerk is entitled to take lunches and breaks and may often need to address personal situations that require an office to be physically closed. The same could be true in a two-employee office when one employee is away on annual leave and the remaining employee is suddenly required to take personal leave. The focus in these situations is ensuring that members of the public still have an opportunity to conduct necessary business with the courts.

On a day-to-day basis, members of the public should have an opportunity to make payments and file pleadings, and perhaps obtain relevant information from the court. If a court clerk is absent from the court for whatever reason, members of the public should still have an opportunity to do these things. The court can provide these services by authorizing other government employees to accept payments and pleadings, and answer basic questions. Other government employees can be empowered to temporarily do these things and to be under the direction and control of the judge and the court in performing these functions. The other government employees do not need to have access to the computer system to input information or to get information from the computer files. The court can just establish a mechanism to ensure

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efficient, and independent system for the advancement of justice under the law.**

that payments are properly receipted and that pleadings are properly acknowledged, subject to being put into the computer at a later time. If possible, the court should also leave a number where the clerk can be reached to handle any emergencies that might arise. Under the rules governing access to court information and processes, other government employees would not be required to have access to the computer and court files for purposes of making copies, because the court can take up to ten days to respond to those types of requests. Therefore, as long as the absences are not extensive, those types of requests can be answered when the clerk returns.

In making this opinion, I am not suggesting that courts make a regular practice of providing different mechanisms to accommodate the public. Having a clerk present is always the best way to handle payments, pleadings, and requests for information. However, our office recognizes the realities that courts can face and we can focus on courts being functionally open in those circumstances.

Hopefully this answers the basic question. However, if you have more specific questions, please let me know.